

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ORLANDO MARTIN,

Plaintiff,

No. CIV S-05-0557 DFL JFM P

vs.

ALVARO C. TRAQUINA, et al.,

Defendants.

ORDER

_____/

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On September 27, 2005, defendants filed a motion to dismiss due to plaintiff's failure to exhaust administrative remedies prior to suit. Thereafter, on October 12, 2005, this court issued a scheduling order. On November 1, 2005, plaintiff filed a motion to amend together with a proposed amended complaint. By order filed December 21, 2005, plaintiff's motion to amend was granted, plaintiff was granted a period of thirty days in which to file a second amended complaint, and defendants' motion to dismiss was denied. On January 13, 2006, plaintiff filed a second amended complaint.

On December 27, 2005, defendants filed a request to modify the October 12, 2005 scheduling order. Defendants' request is predicated on the fact that the pleadings will likely not be finalized until shortly before the deadline for completion of discovery set in the October 12,

1 2005 scheduling order. Plaintiff opposes defendants' request. After review of the record, and
2 good cause appearing, the scheduling order will be vacated and a new scheduling order will be
3 issued by the court after defendants' response to plaintiff's second amended complaint has been
4 filed and served.

5 Plaintiff has filed documents entitled "request for admissions." Plaintiff is
6 informed that court permission is not necessary for discovery requests and that neither discovery
7 requests served on an opposing party nor that party's responses should be filed until such time as
8 a party becomes dissatisfied with a response and seeks relief from the court pursuant to the
9 Federal Rules of Civil Procedure. Discovery requests between the parties shall not be filed with
10 the court unless, and until, they are at issue.

11 In accordance with the above, IT IS HEREBY ORDERED that:

12 1. Defendants' December 27, 2005 request for modification of scheduling order
13 is granted;

14 2. The scheduling order filed October 12, 2005 is vacated;

15 3. A new scheduling order will be issued after defendants have filed and served a
16 response to plaintiff's second amended complaint; and

17 4. Plaintiff's January 4, 2006 requests for admissions will be placed in the court
18 record and disregarded. Plaintiff is cautioned that further filing of discovery requests or
19 responses, except as required by rule of court, may result in an order of sanctions, including, but
20 not limited to, a recommendation that this action be dismissed.

21 DATED: January 24, 2006.

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24 UNITED STATES MAGISTRATE JUDGE

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